

Paragraph 9 Exemption

The reclamation or improvement of land

1 INTRODUCTION

This document provides guidance, definitions, operational policy and strategy with regard registering a paragraph 9 exemption under Schedule 1 of the Waste Management Licensing (Scotland) Regulations 2011 (“the Regulations”) for the reclamation or improvement of land.

2 SEPA’S OPERATIONAL POLICY CONCERNING PARAGRAPH 9 EXEMPTIONS.

2.1 What wastes can be used for a paragraph 9 exemption?

Only wastes listed in Part 1 of Table 3 of Schedule 1 to the Waste Management Licensing (Scotland) Regulations 2011 can be used for land treatment and only wastes listed in Part 2 of Table 3 of Schedule 1 to the Waste Management Licensing (Scotland) Regulations 2011 can be used for Agricultural benefit. Only waste which will be used for either land treatment or agricultural benefit can be stored, providing the storage is for less than or equal to 6 months. All the allowable wastes are reproduced in full in the notification form. No other wastes may be used under this exemption.

2.2 When can a paragraph 9 exemption not be used?

A paragraph 9 exemption must meet all of the following criteria otherwise the activity is not exempt:

- Wastes containing dangerous substances cannot be involved. Dangerous substances are taken to mean those identified within The Special Waste Regulations 1996 and the subsequent amendments [The Special Waste Amendment \(Scotland\) Regulations 2004](#).
- The wastes to be used must be defined in Table 3 of Schedule 1 to the Waste Management Licensing (Scotland) Regulations 2011. Other wastes are not allowable under a paragraph 9 exemption.
- The waste cannot be used at a site designed or adapted for the final disposal of waste by landfill at any time when such disposal is the subject of a waste management licence or a pollution prevention control permit.
- The waste must be used for the purpose of reclamation, restoration or improvement of land which has been subject to industrial or other man made development. [Note: Agriculture is deemed not to be a suitable industrial or other man made development for the purposes of registering a paragraph 9 exemption].
- The use to which the land could be put must be improved by the use of the waste.
- The waste must be used in accordance with the requisite planning permission (if any).
- The waste is used to a depth not exceeding 2 metres or it is not used above the final cross sections shown on the plan submitted with the notification.
- The waste used cannot exceed 20,000 cubic metres per hectare.

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2.3 What must be provided by the applicant?

- At least 21 days written notice of the date on which the exempt activity is first to be carried on shall be given to SEPA.
- The payment of the appropriate fee. (This can be found on the SEPA website www.sepa.org.uk under the current charging scheme or from the local SEPA office).
- A plan of each place at which the exempt activity is to be carried on showing-
 - (a) the boundaries of that place; and
 - (b) the locations within that place at which the exempt activity is to be carried on.
- The establishment or undertaking's name, address and telephone number and, if applicable, its fax number and email address.
- Where less than 2,500 cubic metres of waste are to be used, a description of the treatment, the type and quantity of waste to be used and the location of the treatment.
- Where 2,500 or more cubic metres of waste are to be used-
 - (i) the total quantity of waste to be used;
 - (ii) the type of waste to be used;
 - (iii) the location of the land where the waste is to be used or stored, identified by reference to a map and a eight figure Ordnance Survey grid reference, including the name, address, telephone number and, if applicable, the fax number and email address of the landowner;
 - (iv) a plan of the use with cross-sections showing the proposed levels of the land affected by the treatment;
 - (v) the intended start and completion date of the use or storage.
- A certificate describing how the activity will result in benefit to agriculture or ecological improvement, which shall be prepared by or based on advice from a person who, in the opinion of SEPA, has appropriate technical or professional expertise.

2.4 What type of records does the establishment or undertaking need to keep?

Where the volume of waste used exceeds 2,500 cubic metres, records shall be kept of the quantity, nature, origin, destination and method of recovery or disposal of all waste used. The records must be kept for a period of at least 2 years and shall be made available to SEPA on request.

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2.5 Is it an offence to carry out a paragraph 9 activity by doing most of what is required but, for example, not having the correct planning permission?

Yes! - A person who carries on an exempt activity in breach of the registration obligations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

2.6 What are the main reasons a notification will be taken off the public register?

Although not exhaustive there are several principal reasons why a notification would be taken off the register. These are:

- The operator is no longer carrying out the activity;
- The activity is being carried out in breach of any of the conditions or limitations of the relevant exemption;
- The operator fails to meet the Registration Obligations; and
- The type and quantity of waste submitted to the activity, and method of recovery are not consistent with the Relevant Objectives.

Schedule 4 (6) of the Waste Management Licensing (Scotland) Regulations 2011 specifies that it must be ensured that waste is recovered without endangering human health and without using processes or methods which could harm the environment and in particular without:

- Risk to water, air, soil, plants or animals; or
- Causing nuisance through noise or odours; or
- Adversely affecting the countryside or places of special interest.

An exemption is removed from the register when the activity is no longer being undertaken in accordance with the Regulations. The continuation of the activity without either a waste management license or registered exemption is an offence.

2.7 Is composted material still a waste and if it is to be used for land improvement or agricultural benefit, does it still require to be registered as an exempt activity?

The general principles with respect to composting standards and the definition of waste are set out in the National Waste Plan, launched and published (copy available on our website) by the Scottish Executive and SEPA in 2003.

"With regard to court decisions and the proposal for a directive on biodegradable waste, SEPA and the Scottish Executive consider that composts from source-segregated wastes that meet PAS100 or the Composting Association standards, and which are used as a product, will not be considered as waste. Until such time as standards are agreed for other composts, SEPA and the Scottish Executive will ensure that the regulation of mixed waste composting is proportional to the risks." (page 46)

This means that SEPA will accept that composted waste which meets the PAS100 standard is not waste - so long as there is a readily available market for the material and

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so long as there is no subsequent discard of the compost. Materials which do not comply with the standard will be regulated - either under a license/permit or under exemption (e.g. paragraph 9 exemption).

The PAS100 standard is a British Standards Institute (BSI) Publicly Available Specification developed by BSI in association with Waste Resources Action Programme (WRAP) and the Composting Association (TCA). Compost not meeting Pas 100 standard is still regarded as waste but can be applied under a paragraph 9 exemption as waste code 190503 "off specification compost" providing no dangerous substances are present in the waste.

2.8 If any beneficial use can be made of land without treatment, then can a paragraph 9 exemption still be utilised?

At SEPA's Regulatory Management Team meeting of the 6 December 2002 the decision was taken that the interpretation that any beneficial use of brownfield land, such as industrial, precludes an exemption for soil or soil conditioner spreading was not in accordance with the intentions of the Waste Management Licence exemptions and would prevent any such activities on brownfield land.

Where soil or soil conditioner, such as sewage sludge is being spread on part of the site for a legitimate use, eg a tree screening belt or other landscaping, **and**, all relevant objectives are complied with, then an exemption is appropriate, even if the primary use is industrial buildings.

2.9 Is it possible to use waste more than two metres deep for part of the site as long as throughout the whole site no more than 20000m³ of waste is used per hectare?

No, paragraph 9(3)(d) of schedule 1 to the Waste Management Licensing (Scotland) Regulations 2011 states that,

"the waste is used to a depth not exceeding the lesser of 2 metres or the final cross sections shown on the plan submitted under regulation 25(2) or 26(2) of these Regulations; and (e) the waste used does not exceed 20,000 cubic metres per hectare."

2.10 Can an exemption be registered if Planning permission is required but has not been granted?

Paragraph 9(3)(c) of schedule 1 to the Waste Management Licensing (Scotland) Regulations 2011 states that Paragraph 9(1) exempts the use of the listed wastes if "the waste is so used in accordance with the requisite planning permission (if any)". The phrase "if any" recognises that not all uses will need planning permission; however, if the use in question does require it, then activities under paragraph 9 would have to have planning permission in place to benefit from the exemption.

2.11 Can soil from a contaminated site be used?

Yes, but care is required to ensure that the soil is suitable for use and will not cause pollution or harm. To prove this sufficient evidence is required to show that the soil is

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suitable. Wastes containing dangerous substances e.g. Special Waste, are not allowed to be used in a paragraph 9 exemption.

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2.12 How often will a paragraph 9 exemption be inspected?

The Waste Management Licensing (Scotland) Regulations 2011 state that: “An initial inspection shall be carried out at the time when the exempt activity commences. Thereafter, periodic inspections shall be carried out at intervals not exceeding 12 months.” In practice this means one inspection when registered and only inspect again upon renewal or if there is a complaint or incident.

2.13 How many farms can I apply for under one notification?

SEPA will accept:

- separate notifications for geographically separate farm units, even if IACS farm holding numbers are the same; or
- single notifications for multiple farms where the farms neighbour one another and are managed as one unit and which are, as a result of amalgamation of farm businesses, under the same IACS holding number.

This has been the approach taken by SEPA for farms regulated under the Groundwater Regulations since 1999.

2.14 How many soil samples do I require to show agricultural benefit?

SEPA require a sample for every field. Where fields are greater than 10 hectares we require a sample for each 10 hectare or part thereof. Where there are many small fields with the same soil type and crop requirements these may be amalgamated into 10 hectare areas.

2.15 How old can my soil analysis be?

In assessing benefit to agriculture the more recent analysis the better. Normally soil analysis should be no older than 12 months at the time of submission of the notification (including renewal). Older analysis up to three years prior to the submission of the notification is acceptable however provided documentary evidence is supplied to show how other wastes/fertilisers applied since that date have been accounted for in terms of calculated application rates.

2.16 How old can my waste analysis be?

For wastes that vary little in composition over the time in which they are produced, analysis up to 2 years prior to notification is acceptable. For waste streams that vary in composition over time, analysis within 6 weeks of submission of notification will be required.

To demonstrate that an analysis of the waste is representative (ie. to argue for the submission of data up to 2 years old) several samples of different batches should be supplied.

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For renewals, where the wastes chemical composition does not change, analysis can be supplied up to every three years. Where the chemical composition is variable analysis should be within 6 weeks of submission of the renewal.

2.17 If the operator fails to treat the land as per the good agricultural practice specified in the PEPFAA code (Prevention of Environmental Pollution from Agricultural Activity) will the notification be taken off the public register by SEPA?

If it is identified that wastes are not being applied as per PEPFAA Code (ie. to waterlogged/frozen ground) and there is risk of pollution, the exemption will be taken off the public register and appropriate enforcement action taken.

In circumstances where enforcement action is being considered, the failure to follow the PEPFAA Code would be taken into account by SEPA.

2.18 What happens if SEPA deems that in general the notification is acceptable but that one or more of the fields the operator proposes to treat with waste is not acceptable?

In strict legal terms the whole notification should be refused as the operator is notifying SEPA of their intention to carry out an activity rather than applying to carry out an activity. However, SEPA intends to take a pragmatic approach. Where it is identified during full assessment of the notification that it is inappropriate to treat a specific field due to potential pollution risk SEPA will give the Operator five working days (where the 21 day time period allows) to amend and initial their notification. This is the reason a pollution risk assessment is required for each field.

2.19 What additional analysis of the soil and waste is required to show that the requirements of the Nitrates Directive are being complied with?

Nitrate Vulnerable Zones (NVZ's) are areas of land that are designated sensitive to nitrate pollution under the EC Nitrate Directive. Much of the East of Scotland is designated as an NVZ as is the Nith catchment in Dumfriesshire. To identify if the land you propose to treat is within an NVZ contact your local SEPA office or local Scottish Government Agricultural Office.

The soil and waste should be analysed for Available Nitrogen (NH₄-N) and Total Organic Nitrogen (Kjeldhal digestion). Note: This analysis may be required to show agricultural benefit.

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3 OTHER SOURCES OF INFORMATION AND GUIDANCE

Prevention of Environmental Pollution From Agricultural Activity Code of Good Practice (1997) The Scottish Executive.

Prevention of Environmental Pollution From Agricultural Activity Code of Good Practice. Dos and Don't Guide (2002) The Scottish Executive.

Technical Note T459: Use of Non-agricultural Wastes on Farmland (1997) Scottish Agricultural College.

Technical Note T481: Risks from Spreading Liquid Waste on Sloping Ground (1999) Scottish Agricultural College.

Code of Practice for Landspreading Paper Mill Sludge (1998) The Paper Federation of Great Britain.

The Waste Management Licensing (Scotland) Regulations (2011), Statutory Instrument 2011 No. 228